Ohio a dog was not property and therefore could not be the subject of larceny. The court further said:

'It will be time enough for the courts to say that a dog is the subject of larceny when the lawmaking power of the state has so declared. "Constructive crimes are odious and dangerous." ' Findlay *v.* Bean, 8 Serg. & Rowle (Pa.) 571.

"Parenthetically we may observe that in this state dogs, in derogation of the common-law rule, are declared to be personal property, 'and their value is to be ascertained in the same manner as the value of other property.' Pen. Code, sec. 491.

"There are other cases to the same effect as the above, but, as before stated, the proposition seems to be so clearly tenable that further citations are deemed unnecessary."

No Right of Action for Prenatal Injuries.—In Drobner *v.* Peters, 133 N. E. 567, the Court of Appeals of New York, held that an action by an infant for negligence resulting in prenatal injury is not sustainable under the principles of the common law, and without legislative sanction, and Penal Law, secs. 1050, 1052, as to injuries to a child quick in its mother's womb, secs. 80, 81, as to producing miscarriage of a child not quick, and Code Cr. Proc. secs. 500, 505, preventing execution of a female quick with child, do not change the common law rule.

The court said in part:

"Defendant negligently permitted a coalhole in the sidewalk in front of his premises to remain uncovered. Plaintiff's mother fell into it. Plaintiff, in his mother's womb, sustained injuries. Born 11 days after the accident, he now brings this action. It is contended that at the time of the injury he was not a person, but was a part of the body of his mother, and that, as the injury was to his mother, he has no cause of action.

"Mr. Justice Holmes said in 1884, in Dietrich *v.* Northampton, 138 Mass. 14, 52 Am. Rep. 242, that no case, so far as he knew, had ever decided that an infant could maintain an action for injuries received in the mother's womb. The great weight of authority is still against the plaintiff's contention that the unborn child has a right of immunity from personal harm (Allaire *v.* St. Luke's Hospital, 184 Ill. 359, 56 N. E. 638, 48 L. R. A. 225, 75 Am. St. Rep. 176; Walker *v.* Great Northern Ry. Co., 28 L. R. Ir. 69; Gorman *v.* Budlong, 23 R. I. 169, 49 Atl. 704, 55 L. R. A. 118, 91 Am. St. Rep. 629; Buel *v.* United Rys. Co., 248 Mo. 126, 154 S. W. 71, 45 L. R. A. (N. S.) 625, Ann. Cas. 1914C, 615; Lipps *v.* Milwaukee, etc., Co., 164 Wis. 272, 159 N. W. 916, L. R. A. 1917B, 334), although much judicial argument has been advanced to support a contrary ruling (Nugent *v.* Brooklyn Heights R. R. Co., 154 App. Div. 667, 139 N. Y. Supp. 367; dissenting

opinion, Boggs, J., Allaire *v.* St. Luke's Hospital, supra; Beven on Negligence [3d Ed.] 73, 76).

"In Quinlen *v.* Weich, 69 Hun. 584, 23 N. Y. Supp. 963, it was held that a child born after the father's death was a child at the time of the injury which caused the death, within the meaning of the Civil Damage Act (Laws 1873, c. 646,) and as such was entitled to maintain an action for injury in means of support against the person who sold intoxicating liquors to the father, but this court on appeal (Quinlan *v.* Welch, 141 N. Y. 158, 165, 36 N. E. 12) carefully declined as unnecessary to the decision either to approve or disapprove the views expressed by Haight, J., below.

"The reasons given to defeat recovery in such a case are: Lack of authority; practical inconvenience and possible injustice; no separate entity apart from the mother, and therefore no duty of care; no person or human being in esse at the time of the accident. They are not absolutely conclusive against the infant en ventre sa mere.

'The law in many cases hath consideration of him in respect of the apparent expectation of his birth.' 7 Coke Rep. 8b.

"By a legal fiction or indulgence, a legal personality is imputed to an unborn child as a rule of property for all purposes beneficial to the infant after his birth (The George & Richard, L. R. 3 Ad. & Ecc. 466), but not for purposes working to his detriment (Villar *v.* Gilbey, [1907] A. C. 139, 145). By the criminal law, such being the solicitude of the state to protect life before birth, it is a great crime to kill the child after it is able to stir in the mother's womb by any injury inflicted upon the person of the mother (Penal Law, sec. 1050), and it may be murder if the child is born alive and dies of prenatal injuries (Clarke *v.* State, 117 Ala. 1, 23 South. 671, 67 Am. St. Rep. 157). If the mother with the intent to produce her own miscarriage produces the death of the quick child whereof she is pregnant, she may be guilty of manslaughter. Penal Law (Consol. Laws, c. 40), sec. 1052. If the child is not quick, it may be felony to produce a miscarriage. Penal Laws, secs. 80, 81. If a female convict under sentence of death is quick with child she may not be executed. Code Crim. Proc. secs. 500, 505. Many authorities are collected in the comprehensive prevailing opinion below. While they tend to cloud the real issue, they are not controlling. Rights of ownership of property do not connote a duty of personal care to the inchoate owner, nor does the crime of causing the death of an unborn child connote liability to the child for personal injuries. When justice or convenience requires, the child in the womb is dealt with as a human being, although physiologically it is a part of the mother, but the law has been fairly well settled during its centuries of growth against the beneficence of an artificial rule of liability for personal injuries sustained by it.

"Does the present case permit the establishment by judicial decision of the rule that the innocent infant need not bear unrequited the con-

sequences of another's fault? In the mother's womb, he had no separate existence of his own. When born he became a person. He carried the injuries out into the world with him. His full rights as a human being sprang into existence with his birth. No longer may it be urged that the mother alone is injured. The presence of the injured child refutes that theory. Did he succeed to his mother's rights?

"The modern tendency of decided cases is to ignore fictions and deal with things as they are. At common law a cause of action for personal injuries did not survive if death resulted from another's negligence or wrongful act. Lord Campbell's Act, passed in England in 1846, and followed generally in this state (Code Civ. Proc. sec. 1905), was necessary to correct this omission. May this court attach an unnatural meaning to simple words and hold independently of statute that a cause of action for prenatal injuries is reserved to the child until the moment of its birth and then accrues? The formulation of such a principle of legal liability against precedent and practice may be a tempting task, to which sympathy and natural justice point the way; but I cannot bring myself to the conclusion that plaintiff has a cause of action at common law. The injuries were, when inflicted, injuries to the mother. No liability can arise therefrom except out of a duty disregarded, and defendant owed no duty of care to the unborn child in the present case apart from the duty to avoid injuring the mother.

"Strong reasons of public policy may be urged both for and against allowing the new right of action. The conditions of negligence law at the present time do not suggest that the reasons in favor of recovery so far outweigh those which may be advanced against it as to call for judicial legislation on the question."

Salvation Army a Sectarian Institution.—In Bennett *v.* City of La Grange, 112 S. E. Rep. 482, the Supreme Court of Georgia held that the Salvation Army comes within the prohibition of the constitution of Georgia, providing that "no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect, or denomination of religionists, or any sectarian institution."

The court said in part: "A religious sect or denomination is one having a common system of faith. State *v.* Township 9, 7 Ohio St. 52. The term 'church' is one of very comprehensive signification, and imports an organization for religious purposes, for the public worship of God. 11 C. J. 762. The Salvation Army is a benevolent and religious institution. It is likewise a church on wheels. It has the custody and control of all the temporalities and property belonging to the Salvation Army in the United States, and the revenues therefrom. It administers these revenues in accordance with its discipline, rules, and usages. Its entire receipts, revenues, and emoluments are devoted exclusively to its benevolent and philanthropic purposes, with the exception of a moderate and reasonable compensation to those conducting